LILY ISKANDAR & ANOR. v. BONARDY LEO & ORS.

[O.C.J. (Chua J.) April 12, 1983]

[Singapore – Civil Suit No. 1056 of 1979]

Probate & Administration – Will – Granting of probate – Indonesian deceased with immoveables and moveables in Singapore – Pending suit in Indonesia regarding defendants' claim to a legitime portion – Question of probate adjourned until final determination in Indonesia.

Practice and Procedure – Granting of probate – Pending suit in Indonesia regarding defendants' claim – Question of probate adjourned until final determination in Indonesia.

The plaintiffs in this case claimed to be the executrix/executor named in the last Will dated November 27, 1975, executed in Singapore, of the deceased, Lugito Surjo Kusno. The deceased was an Indonesian subject and he died on November 21, 1978 in Jakarta, Indonesia. The defendants claimed as lawful heirs of the deceased being the deceased's children by one Wantimah who predeceased the deceased. The first plaintiff claimed to be the second wife of the deceased and the second plaintiff was the eldest of the three children of the deceased by the first plaintiff.

The plaintiffs sought for probate of the Will in respect of the immoveables and the moveables in Singapore. The defendants opposed the granting of probate in respect of the moveables.

By an Order of Court dated April 30, 1981, it was ordered, *inter alia*, that "by consent, the question of probate of the moveables be adjourned until after the final determination in Indonesia in relation to the validity of the said Will in Indonesia and the status of the plaintiffs and the defendants as the lawful heirs of the deceased." Prior to this Order, proceedings had been commenced in Indonesia by the parties.

The defendants' arguments before the Indonesian Courts throughout had been that they were born of a subsisting marriage before 1956. No question of legalisation or acknowledgment was raised by them in the Indonesian proceedings and no claim to a *legitime portion* was made in the Indonesian proceedings. The defendants relied on the 1956 marriage certificate and the other documents which they produced as evidence.

The Indonesian Courts held that a pre-existing marriage had not been proved so that the defendants' claim failed. The courts held that the marriage certificate was only evidence of a new marriage in 1956 and that since that marriage certificate did not expressly mention the children therefor the defendants' claim must fail because the defendants had no *locus standi* to claim to be heirs based on the marriage certificate.

Held: (1) it would appear that it may be still open to the defendants to raise a claim to a *legitime portion* in Indonesia. The defendants' claim to a *legitime portion* should be made expeditiously and prosecuted with diligently;

(2) pending the adjudication of the defendants' claim to a legitime portion, Letters of Administration Pendente Lite limited to the moveable in Singapore should be granted to such person as the parties may agree or in default of agreement to such person the court may appoint, and that such person would hold office for a specified period to be agreed by the parties or in default, by the court:

(3) probate of the Will in respect of all immoveables would be granted to the plaintiffs. The question of probate in respect of the moveables would be adjourned until after the final determination in Indonesia of the application of the defendants for a *legitime portion;*

(4) the parties may have liberty to apply and to restore.

CIVIL SUIT.

L.A.J. Smith for the plaintiffs.

Jonathan Parker Q.C. (*Mrs. Ann Tan* and *S.Q. Ong* with him) for the defendants.

Cur. Adv. Vult.

Chua J.: The plaintiffs claim to be the Executrix/Executor named in the last Will dated November 27, 1975, executed in Singapore, of Lugito Surjo Kusno (the deceased), an Indonesian subject, and to have the said Will established. The deceased died on November 21, 1978, in Jakarta, domiciled in Indonesia. The defendants are persons claiming to be entitled to the estate of the deceased as the lawful heirs of the deceased being the deceased's children by Madam Wong Tjon Moie (Wantimah) who predeceased the deceased. The first plaintiff claims to be the second wife of the deceased and the second plaintiff is the eldest of the three children of the deceased by the first plaintiff.

By an Order of Court dated April 30, 1981, it was ordered:–

"1. BY CONSENT the question of probate in respect of the moveables be adjourned until after the final determination in Indonesia in relation to the validity of the said Will in Indonesia and the status of the Plaintiffs and the Defendants as the lawful heirs of the deceased.

2. Letters of Administration Pendente Lite limited to the moveables in Singapore be granted to such persons as the parties may agree or in default of agreement to such person the court may appoint and that such person to hold office until the final determination of these proceedings and that the Administrator so appointed be empowered to get in all the moveables in Singapore and institute any necessary inquiries for that purpose and to pay estate duty.

3. The immoveables which fall under Clause 7 of the said Will be treated as property to be dealt with by the Administrator Pendente Lite who would be Administrator of all moveables and all immoveables other than those devised and bequeathed in Clauses 5 and 6 of the said Will.

4. By consent the defence raised as regards Clause 7 of the said Will be reserved until after the result of the Indonesian proceedings is known.

5. Probate of the said Will limited to the immoveables devised and bequeathed in Clauses 5 and 6 of the said Will be granted to the two Plaintiffs.

6. The parties be at liberty to restore the case after such determination in Indonesia."

Before the judgment of April 30, 1981, proceedings had been commenced in Indonesia by the parties in the North-East Jakarta District Court and there was an appeal from the District Court to the Jakarta High Court and an appeal from the High Court to the Supreme Court. Since the judgment of April 30, 1981, the defendants have been unsuccessful in their appeal to the Supreme Court and they filed a Petition for Review and this was rejected by the Supreme Court.

The trial of this action was restored. The plaintiffs now seek probate of the said Will in respect of the immoveables and the moveables in Singapore. The defendants oppose the granting of probate in respect of the moveables.

Each party called an expert witness in Indonesian law. The plaintiffs called Professor Dr. S. Gautama and the defendants Mr. Jan Apul. Professor Gautama has been in practice for thirty-two years as advocate and solicitor in Indonesia and is also Professor of Law, University of Indonesia (Law Faculty). Mr. Jan Apul is a lawyer practising in Indonesia specialising in civil matters since 1972. He graduated from the University of Indonesia in 1963. He was first a lecturer, then a public prosecutor (1964-1968) and a businessman (1968 – 1972).

What took place in this matter in Indonesia was this. In January, 1979, the plaintiffs petitioned exparte, to the North-East Jakarta District Court for a Certificate of Inheritance – Petition No. 92/35/UT/1979 P. The petition was granted. The District Court (1) declared that the said Will of the deceased executed in Singapore was valid according to Indonesian law; (2) confirmed the said Will and (3) confirmed that the plaintiffs were the executrix/executor. (Decree No. 92).

In May 1979, the defendants petitioned exparte, to the North-East Jakarta District Court for a Certificate of Inheritance – Petition No 1219/344/UT/1979 P. The petition was granted. The District Court:

(1) declared that Mrs. Sariwati Tjandra (2nd defendant), Mrs. Pauliana Lugito (3rd defendant) and Leo Bonardy (1st defendant) were the only heirs of the deceased and Wantimah;

(2) declared "as law that the part of each heir was 1/3rd part of the entire estate within the country as well as abroad" of the deceased and Wantimah. (Decree No. 1219).

The issues were joined in the same court in August, 1979, in Suit No. 158/69/UT/1979G (Suit No. 158), in which the defendants were the plaintiffs and the plaintiffs and the other four children of the first plaintiff by the deceased were the defendants. There was a counterclaim by the defendants in Suit No 158. Dr. Gautama agreed, when cross-examined by counsel for the defendants, that (1) both sides failed in the dispute; (2) the claim was dismissed on formal grounds; (3) the counterclaim was dismissed on the grounds that as the claim was dismissed the counterclaim had to be dismissed; and (4) the claim and the counterclaim were dismissed for technical reasons.

There was then an appeal to the High Court of Jakarta – Case No 241/1979/P.T. Perdata. The appeal was determined in March, 1980. The claim of the defendants was dismissed and the judgment of the District Court was confirmed in relation to the claim and it was reversed in regard to the counterclaim. The result was that the 1st plaintiff and her children were granted the relief that they had counterclaimed.

The defendants then appealed to the Supreme Court of Indonesia. That was determined in June, 1981, – Appeal No 2058K/SIP/1980.

The contentions of the plaintiffs are that the Indonesian Courts have (1) declared that the said Will of the deceased was validly executed according to Indonesian law; (2) rejected completely the claim by the defendants to be the heirs of the deceased; (3) declared that the plaintiffs, executors named in the said Will, and the children of the deceased by the first plaintiff are the testamentary heirs of the deceased and as such are entitled to the deceased's properties.

The defendants concede that the Indonesian Courts have finally decided (1) that the said Will was validly executed under Indonesian law; (2) that the plaintiffs are entitled to take under the said Will as testamentary heirs of the deceased.

The contention of the defendants is this. The status of the defendants as lawful heirs of the

deceased, whether they are the legitimate children of the deceased, has not been decided by the Indonesian Courts. The legitimacy or otherwise of the defendants has an important effect upon the devolution of that part of the deceased's estate which devolves under Indonesian law namely the moveable estate of the deceased. Under the Indonesian law of legitime, legitimate children are entitled as of right to a specified share of a deceased's estate despite any testamentary dispositions which the deceased may have purported to make. In the present case, if the defendants are legitimate children then they will be entitled to one-quarter share each of the deceased's moveable estate.

The admitted facts are that the three defendants are children of the deceased by Wantimah. In 1956, long after the birth of the three defendants, there appears in the Register of Marriages in Indonesia an entry relating to the marriage of the deceased and Wantimah in Medah.

The only dispute is that the defendants have always maintained and still maintain that their parents were validly married at the dates of their birth by virtue of a customary ceremony of marriage performed in China in 1921 before the births of any of the defendants. The plaintiffs dispute not only the validity but the existence of the ceremony in 1921. Their case is that the defendants were born before the marriage of the deceased and Wantimah in 1956 and they say that the marriage certificate should have contained an express confirmation or acknowledgment of the existing children. The plaintiffs say that that issue has now been finally decided by the Indonesian Courts.

The defendants submit that the only remaining matter to be decided by this Court is, has the Indonesian Courts decided finally whether the defendants are illegitimate children in the sense that it is no longer open to them to seek to establish their legitimacy under Indonesian law. The plaintiffs, however, contend that looking at the judgment of the Supreme Court that it does finally decide that.

The defendants submit that the Supreme Court does not go so far as that and that all it decided was that the defendants has no *locus standi* to claim to be heirs of the deceased by relying on Decree No. 1219 because Decree No. 1219 was inaccurate in that the marriage certificate to which it referred did not contain an acknowledgment of the existing children.

It is therefore necessary to see if the status of the defendants as lawful heirs of the deceased has been finally decided by the Supreme Court of Indonesia.

The defendants say that there has been as yet no final determination in Indonesia on the status of the defendants as lawful heirs of the deceased in that it has not yet been determined that they are not entitled to a legitimate portion.

Several articles of the Indonesian Civil Code relating to the legitimacy of children have been referred in the course of this hearing.

Article 272 reads:

"The children born out of wedlock, with the exception of those reared in adultery or incest, with the subsequent marriage of the father and the mother, will be legitimated, if both parents have legally recognized them prior to the contract of the marriage, or if such recognition be made in the marriage certificate itself."

Dr. Gautama in cross-examination said a separate authentic deed or acknowledgment was necessary in every case but in re-examination he said that such an acknowledgment could be incorporated in the birth certificate itself. In re-examination he went further still and said that in cases of legitimation by subsequent marriage, the marriage certificate must in any event contain the names of the existing children. If Dr. Gautama is right then it must follow that an authentic deed executed before marriage acknowledging the children will be useless since the only available method of acknowledgment is by stating the names of the children in the marriage. It would appear that the contention of Dr. Gautama is contrary to the provisions of Article 274.

Article 274 provides:—

"If the two parents before or at the time of marriage have failed to acknowledge their children born out of wedlock, this failure can be corrected with a letter of legalisation by the President, which may be given after hearing the advice of the Supreme Court."

Articles 281 provides:—

"The recognition of a natural child, if such has not already been effected by virtue of the birth certificate of the child or on the occasion of solemnization of the marriage, may be carried out in any authentic document.

Such a recognition may also be carried out in a deed executed by the official of the civil registry and registered in the register of births pursuant to its date. Such recognition

must be stated in the margin of the birth certificate if this is available.

If such recognition is made in another authentic deed, then any interested party shall be entitled to demand the registration of such recognition on the margin of the birth certificate of the child.

However, any absence of registration of such recognition on the margin of the birth certificate can by no means be objected to in order to dispute the status which has been obtained by the recognized child."

The first paragraph of this article indicates that an authentic document will be enough notwithstanding that the marriage certificate may not contain the name of the child. There is in evidence the marriage certificate of Paulina Lugita (the third defendant) which is an authentic deed made before 1956 (Ex. D 8) in which the deceased and Wantimah (who was there described as the wife of the deceased) gave permission to the marriage in their capacity as parents of the bride and that authentic deed was signed by the deceased.

There is a direct and acute conflict of opinion between Dr. Gautama and Mr. Apul regarding the interpretation and effect of Articles 272, 274 and 281. However both Dr. Gautama and Mr. Apul were agreed that the defendants could make an application based on Article 274. Dr. Gautama's opinion was that such an application would fail on the ground that Article 274 would no longer be enforced by the courts although he accepted that there was no authority either way on that point. Mr. Apul, on the other hand, was of the opinion that such an application could succeed.

There is an issue as to the true interpretation and effect of these Articles. It is not for me to decide which of the two experts in Indonesian law is right. It is for the Indonesian Courts to make a decision as to the true meaning and effect of the Articles.

What did the Supreme Court decide? The arguments of the defendants through the Indonesian Courts had been that they were children born of a subsisting marriage before 1956. The question of acknowledgment or legalisation did not arise.

The question is has the Indonesian Courts given judgment regarding the *legitime portion* of the defendants? The plaintiffs' contention is that the issue of the defendants being legalised, and all points raised as to acknowledgment was before the Courts in Indonesia. Dr. Gautama, however, said that the defendants never suggested that they are entitled to a *legitime portion.* He said that the defendants "could always claim that the will was valid only to a limited extent and that they are entitled to a *legitime portion.* But they never did that."

Mr. Apul said that the claim of the defendants were rejected by the District Court on procedural grounds and that the claim of the defendants was also rejected by the High Court on procedural grounds and that no Court in Indonesia has considered the facts of defendants' claim. It is open to the defendants to claim in Indonesia an entitlement to a *legitime portion* as there has been no judgment regarding the *legitime portion* in the Indonesian judgments.

The defendants' arguments before the Indonesian Courts throughout had been that they were born of a subsisting marriage before 1956. No question of legalisation or acknowledgment was raised by them in the Indonesian proceedings and no claim to a *legitime portion* was made in the Indonesian proceedings. The defendants relied on the 1956 marriage certificate and the other documents which they produced as evidence not of acknowledgment followed by the subsequent marriage of their parents but as evidence establishing that their parents were at all material times legally married. But the Indonesian Courts held that a pre-existing marriage had not been proved so that the defendants' claim failed. The courts went on to say that the marriage certificate was only evidence of a new marriage in 1956 and that since that marriage certificate did not expressly mention the children therefore the defendants' claim must fail because the defendants had no *locus standi* to claim to be heirs based on the marriage certificate. That I think is the essence of the Supreme Court decision. I do not think that the Supreme Court was concerned to investigate any other claims which the defendants might or might not be able to make. It was only concerned to decide whether the marriage certificate formed a proper basis on which the defendants could claim to be heirs of the deceased.

It would appear that it may be still open to the defendants to raise a claim to a *legitime portion* in Indonesia. That being the case I think the defendants should be given an opportunity to make such a claim. Pending the adjudication of the defendants' claim to a *legitime portion* I think that the appropriate order to make now would be that

Letters of Administration Pendente Lite limited to the moveables in Singapore be granted to such person as the parties may agree or in default of agreement to such persons as the court may appoint and that such person to hold office for a specified period to be agreed between the parties and in default of such agreement to be determined by the court, and that the Administrator so appointed be empowered to get in all the moveables in Singapore and institute any necessary inquiries for that purpose and to pay estate duty.

The defendants' claim to a *legitime portion* should be made expeditiously and prosecuted with diligently.

Probate of the said Will in respect of all the immoveables is granted to the plaintiffs.

The question of probate in respect of the moveables is adjourned until after the final determination in Indonesia of the application of the defendants for a *legitime portion*.

The parties to have liberty to apply and to restore.

Order accordingly

Solicitors: *L.A.J. Smith; Laycock and Ong.*

CHAN AH YOKE v. EASTERN REALTY CO. LTD.

[D.C.A. (Wee Chong Jin C.J., Kulasekaram & Lai Kew Chai JJ) May 4, 1983]

[Singapore – District Court Appeal No. 23 of 1982]

Landlord and Tenant – Rent-controlled premises – Owner must show he has legal possession of premises to qualify for exemption under Control of Rent (Exemption) Notification 1980, para. 2(a) – Control of Rent Act (Cap. 266), section 30.

Interpretation – Construction of Statute – Exception to general rule not to import words into statutes – "Unavoidably necessary to imply words" to prevent manifest injustice or absurdity – Scope of Control of Rent (Exemption) Notification 1980, para. 2(a).

The present appeal involved the construction of the Control of Rent (Exemption) Notification, 1980, para. 2(a) which reads:

"The following domestic premises are exempted from the provisions of the Act [Control of Rent Act]:– (a) any domestic premises which (at any time after the commencement of this Notification) have not for any period been occupied by the owner or let to a tenant".

The respondents' contention which found favour with the court below was that the words of paragraph 2(a) are plain, clear and unambiguous. Their plain meaning is that any domestic premises which, after October 24, 1980, have not for any period of time been occupied by the owner *or* which, after October 24, 1980, have not for any period of time been let to a tenant are exempted from the provisions of the Control of Rent Act (Cap. 266) (the Act). If the said contention were correct, then the respondents were entitled to possession of 194 Kim Seng Road, Singapore, on the undisputed facts of the case that the appellant in occupation of the premises was the widow of a deceased statutory tenant who had been for 28 years the contractual tenant of the premises which were erected before September 1947 and thus were premises subject to the provisions of the Act.

Held, allowing the appeal: (1) the general rule of construction is not to import into statutes words which are not found there unless it is necessary to do so to give the paragraph sense and meaning in its context;

(2) in construing paragraph 2(a) of the said Notification it is unavoidably necessary to imply the words "in the possession of the owner" after the word "Notification". A literal construction of paragraph 2(a) without the words implied will exempt any domestic premises which after October 24, 1980 have not for any period been occupied by the owner or have not for any period been let to a tenant. Read in this disjunctive manner, the literal construction of the first limb will lead to manifest absurdity and injustice and is inconsistent with the object of the Act;

(3) there is also the rule that express unambiguous language is necessary to take away existing rights;

(4) accordingly, the domestic premises have to be in the possession of the owner before it can be shown that the domestic premises have not for any period been occupied by the owner or let to a tenant.

Cases referred to:

(1) *Tinkham* v. *Perry* [1951] T.L.R. 91, 92

(2) *Khadijah binte Abdullah* v. *S.I.A. Alsagoff* [1957] M.L.J. 90, 98.

(3) *In re Cuno* (1890) 43 Ch. D. 12, 17

DISTRICT COURT APPEAL.

Aloysius Leng for the appellant.
Kirpal Singh for the respondent.

Cur. Adv. Vult.

Lai Kew Chai J. (delivering the Judgment of the Court): The determination of the question at issue in this appeal depends upon the true construction of the Control of Rent (Exemption) Notification, 1980 ("the Notification") which was made by the President on October 21, 1980 in